IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13498 of 2004

Between:

Hydropneumatic Engineers (Hyd) Pvt.Ltd., New Bakaram, Hyderabad rep., by its Managing Director-Mr.S.K.Sanghi.

..... PETITIONER

AND

1 Bharat Dynamics Limited, Bhanur Unit, Medak District-502 305 rep.,

by its Chairman & Managing Director.
2 B&S Technical Hands, Bhanur, rep., by its Proprietor- B.Bhujanga

Reddy.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, direction or directions, declaring the action of the 1st respondent in not awarding the contract of operation and maintenance of Plant & Township to the successful tenderers more particularly the petitioner herein in pursuance of the Tender Notification dated 17-07-2003 as arbitrary, unreasonable and unconstitutional and to issue a consequential direction to the 1st respondent not to award the work to the 2nd respondent who did not participate in the tender process and to issue such other directions as the Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondent No.1: Mr. K.Srinivasa Murthy, Standing Counsel for B.D.L.

Counsel for the Respondent No.2 : Mr. M.Narasimhulu

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13498 OF 2004

ORDER:

M/s.Hydro Pneumatic Engineers (Hyd) Private Limited is the petitioner in this writ petition filed seeking a writ of Mandamus declaring the action of M/s.Bharat Dynamics Limited (B.D.L.), the first respondent, in not awarding the contract of operation and maintenance of Plant & Township for the successful tenderers pursuant to the tender notification dated 17.07.2003, as arbitrary and unreasonable and for a consequential direction to first respondent not to award the work to second respondent, namely, M/s.B & S Technical Hands, Bhanur, represented by its proprietor Sri B.Bhujanga Reddy.

This Court while admitting the writ petition on 04.08.2004 passed interim orders directing the first respondent to continue the petitioner for the operation of maintenance of water supply in Plant & Township. The first respondent immediately moved application being W.V.M.P.2368 of 2004 praying this Court to vacate the interim order. Learned counsel for the petitioner and learned counsel for the first respondent made elaborate submissions and also produced necessary records. The matter was heard finally with the consent of the parties and the writ petition itself is being disposed at the interlocutory stage.

The petitioner Company is registered under the Companies Act, 1956. It is engaged in the business of operation and maintenance of water supply systems, compressed air operation and maintenance of furnaces, and statedly, it is executing certain works for the Ministry of Defence at DRDL, RCI, ASL etc. The first respondent issued tender notice No.BDL/05/K/628/98/2 dated 24.03.1998 inviting tenders for the work of operation and maintenance of water supply systems in Plant & Township. The petitioner submitted tenders and the work was allotted to him on yearly basis. In 2001, the work was renewed in favour of the petitioner. Be that as it is, the first respondent again invited tenders for the similar work by tender notice No.BDL/05/K/693 dated 17.07.2003. As per the tender notice, to be eligible for award, one has to fulfil the following criteria.

1 (a) Must possess valid A.P.G.ST/C.S.T.P.F. Code No. and IT PAN.

(b) The average annual financial turnover during the last three years ending 31.03.2003 should be at least Rs.3.30 lakhs.

(c) Experience of having successfully completed similar works during last 7 years ending 30th June 2003 should be either of the following.

i. Three similar works costing not less than Rs.4.40 Lakhs each or

ii. Two similar works costing not less than Rs.5.50 Lakhs each or

iii. One similar work costing not less than Rs.8.80 Lakhs or

(e) **Similar works means :** Operation & Maintenance and Breakdown maintenance of Water supply system, maintenance of pumps, bore wells, water supply network, manning of pump house in township and plant, round the clock.

The particulars about the works are required to be furnished in the format given below enclosing copies of work order and completion certificates for completed/under progress works.

S.No.	Name of the work	Employers full name and address	Date of award of work	Date of completion of work	Awarded value of work	Completed value of work

The petitioner submitted tenders quoting an amount of Rs.89,100/- (Rupees eighty nine thousand one hundred only) per month. It is the case of the petitioner that out of the three tenderers, the tender submitted by the petitioner is the lowest and the first respondent called the petitioner for negotiations on 11.06.2004, when the petitioner agreed to execute the work at Rs.86,400/- (Rupees eighty six thousand four hundred only) per month. However, the contract was not awarded. Having come to know telegraphically from the Senior Manager that the work will be awarded to the second respondent, the petitioner filed the present writ petition. It appears that the first respondent returned the Earnest Money Deposit amount of Rs.16,500/- (Rupees sixteen thousand five hundred only) to the petitioner.

The Additional General Manager (P&A) of the first respondent filed counter affidavit opposing the writ petition stating that when the Management offered to pay an amount of Rs.78,000/- (Rupees seventy eight thousand only) per month against the previous contract value of Rs.67,065/- (Rupees sixty seven thousand sixty five only), petitioner declined to accept the offer and that the Committee consisting of AGM (P&A), SM (Finance-I) and Assistant Manager (Civil) recommended for cancellation of the tender and accordingly the tender was cancelled. The amount paid by the

petitioner was also returned and the petitioner encashed the same on 27.07.2004. It is further stated that so as to provide certain facilities to land oustees, whose land was acquired for setting up the B.D.L. at Bhanur in Medak District, the authorities assured such displaced persons to award certain works to cooperative societies. Therefore, it was considered to award the work to second respondent for one year as more than half of its members could be gainfully employed in this contract. It is also alleged that second respondent has taken over the work with effect from 01.08.2004 agreeing to undertake the work at a cost of Rs.60,000/- (Rupees sixty thousand only) per month.

It is now well settled that to subserve public interest, every public authority must enter into contract, if it is necessary, keeping in view the financial interest of the organization. The process of inviting tenders or conducting auction would subserve public interest by getting maximum benefit to the organization. Though initially tenders were invited, the same were cancelled and the work was allotted to second respondent. In a given circumstance, the public authority may give go-by to process of tenders and allot the work on nomination basis in the interest of public or in the interest of persons, who belong to weaker sections. In this case, learned Standing Counsel for B.D.L. relies on revised delegation of powers dated 25.07.1996, whereby and whereunder, it is competent for the Chairman-cum-Managing Director (C.M.D.) to award contract without calling for tenders. However, such power can be exercised only in the case of emergency and after recording reasons. It is not seriously disputed that there is no such proceeding of the C.M.D. recording reasons for awarding the work to the second respondent without inviting tenders. It is brought to my notice that when a note was circulated to the C.M.D. regarding the decision of the tender committee, the same was approved by the C.M.D. In my considered opinion, the same would not amount to exercising power of awarding contract without calling for tenders. There cannot be any dispute that C.M.D. can exercise such powers only in the case of emergency and not in a routine manner. Therefore, though the power of the tendering authority to cancel the tenders without giving any reasons cannot be disputed, the award of contract to second respondent ignoring the tender process cannot be validated.

In view of the admitted position that tenders invited pursuant to the notice dated 17.07.2003 are already cancelled, the following order is passed. The first respondent is directed to invite fresh tenders, by giving wide publicity, from all eligible and qualified candidates as per the eligibility criteria that may be fixed by the C.M.D. This exercise may be completed within a period of two months from the date of receipt of a copy of this order following normative standards set up by the first respondent. Pending such finalisation of tenders and award of contract to a qualified tenderer, the C.M.D. of the first respondent may take appropriate action for day to day operation and maintenance of the water supply system in the plant and the township.

The writ petition, with the above directions and observations, is accordingly disposed of.

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(V.V.S.RAO,J)

28.09.2004.

pln

To

1. The Chairman & Managing Director, Bharat Dynamics Limited, Bhanur Unit, Medak District.
2. 2 CD copies.